



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Eric J. Holcomb  
Governor

**JUN 28 2017**

Bruno L. Pigott  
Commissioner

VIA CERTIFIED MAIL: 7004 1160 0004 6517 9900

Mr. Carl Pulver, President  
Pulver & Sons Asphalt Materials Inc.  
819 North Orange Street  
Albion, IN 46701

VIA CERTIFIED MAIL: 7004 1160 0004 6517 9917

Mr. Carl Pulver, Registered Agent  
Pulver & Sons Asphalt Materials Inc.  
2616 E State Road 8  
Albion, IN 46701

Re: Notice of Violation and Proposed Agreed Order  
for Violations Identified via Inspection  
Pulver & Sons Asphalt Materials Inc.  
Plant ID: 113-03265  
Albion, Noble County  
Case No.: 2017-24523-A

Dear Mr. Pulver:

On May 8, 2017, a representative of the Indiana Department of Environmental Management (IDEM), Office of Air Quality, conducted an inspection of Pulver & Sons Asphalt Materials Inc., located at 819 North Orange Street in Albion, Indiana. This inspection was conducted pursuant to IC 13-14-2-2, and a summary of the inspection, mailed on June 6, 2017, was provided pursuant to IC 13-14-5.

As a result of information obtained during this inspection, IDEM alleges that a violation of Federally Enforceable State Operating Permit (FESOP) No.: 113-26570-03265, Permit Condition D.1.12, Testing Requirements, occurred. Specifically, the Permittee shall perform a stack test for PM and PM10 on the aggregate dryer/mixer at least once every five (5) years from the date of the last valid compliance demonstration.

In accordance with IC 13-30-3-3, this letter includes a Notice of Violation that sets forth the alleged violations and an Agreed Order that provides Pulver & Sons Asphalt Materials Inc. the opportunity to settle this enforcement action. IDEM encourages settlement by Agreed Order when possible to quickly correct environmental violations and avoid litigation.

The alleged violations identified in the Notice of Violation are among those that IDEM has determined qualify for expedited enforcement. This means the enclosed Agreed Order is non-negotiable, and it represents IDEM's best settlement offer in this matter. The civil penalty included in the Agreed Order is the penalty amount that IDEM will accept only for the settlement of the alleged violations identified therein under its expedited enforcement program.

If Pulver & Sons Asphalt Materials Inc. agrees to settle this enforcement action in accordance with the enclosed Agreed Order, its Responsible Official should sign and return the entire original Agreed Order within sixty (60) days of receipt to IDEM at the following address:

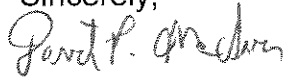
Deborah A. Cole, Case Manager  
Indiana Department of Environmental Management  
Compliance and Enforcement Branch, Office of Air Quality  
100 North Senate Avenue  
Indianapolis, IN 46204

The civil penalty should be sent to the address listed in the Agreed Order within fifteen (15) days of your receipt of a copy of the final adopted Agreed Order. The final adopted Agreed Order will be mailed to you after it is approved and signed by the Assistant Commissioner of IDEM's Office of Air Quality.

IDEM is not required to extend the offer of entry into the Agreed Order for more than sixty (60) days. Because Indiana law allows a source to enter into an Agreed Order without admitting that the violation occurred, the attached Agreed Order includes this non-admission language. (See line 3 of the first paragraph of the Agreed Order). If the Agreed Order is not entered into, IDEM may proceed with additional enforcement action requiring compliance with FESOP 113-26570-03265, Condition D.1.12 and seeking monetary penalties in accordance with IDEM's Civil Penalty Policy (ID No. Enforcement 99-0002-NPD), which likely will result in a greater penalty than the penalty amount offered in this Agreed Order.

Please contact Deborah A Cole, Case Manager, of my staff at 317-234-5377 or by e-mail at [dcole@idem.in.gov](mailto:dcole@idem.in.gov) if you have any questions.

Sincerely,



David P. McIver, Chief  
Enforcement Section  
Office of Air Quality

cc: Noble County Health Department  
Deborah A. Cole, Compliance and Enforcement Branch, Office of Air Quality  
Adrienne Lenyo, Compliance and Enforcement Branch, Office of Air Quality  
Rochelle Marceillars, US EPA Region 5



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JUN 28 2017

### NOTICE OF VIOLATION

Mr. Carl Pulver, President  
Pulver & Sons Asphalt Materials Inc.  
819 North Orange Street  
Albion, IN 46701

Mr. Carl Pulver, Registered Agent  
Pulver & Sons Asphalt Materials Inc.  
2616 E State Road 8  
Albion, IN 46701

Case No.: 2017-24523-A

Based on an investigation on May 8, 2017, the Indiana Department of Environmental Management ("IDEM") has reason to believe that Pulver & Sons Asphalt Materials Inc. ("Respondent") has violated its environmental permit. The violations are based on the following:

1. Respondent owns and operates a portable batch hot mix asphalt plant with Plant I.D. No.: 113-03265, located at 819 North Orange Avenue, in Albion, Noble County, Indiana (the "Site").
2. Pursuant to FESOP No.: 113-26570-03265, Permit Condition D.1.12, the Permittee shall perform a stack test for PM and PM10 on the aggregate dryer/mixer at least once every five (5) years from the date of the last valid compliance demonstration.

Respondent failed to conduct a stack test for PM and PM10 within five (5) years of the date of the last valid compliance demonstration, in violation of FESOP Condition D.1.12.

In accordance with IC 13-30-3-3, the Commissioner herein provides notice that a violation may exist and offers an opportunity to enter into an Agreed Order providing for the actions required to correct the violation and for the payment of a civil penalty for the violation. The Commissioner is not required to extend this offer for more than sixty (60) days. An Agreed Order for your consideration is attached. As noted on the attached Agreed Order, it is a qualified offer of settlement of this matter and, therefore, is inadmissible pursuant to Indiana's Rules of Evidence.

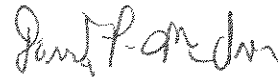
As provided in IC 13-30-3-3, an alleged violator may enter into an Agreed Order without admitting that the violation occurred. IDEM encourages settlement by Agreed Order to quickly correct environmental violations and to avoid litigation.

If the Agreed Order is not entered into within sixty (60) days of receipt of this Notice of Violation, the Commissioner may proceed with additional enforcement action requiring compliance with FESOP Condition D.1.12 and seek additional monetary penalties in accordance with IDEM's Civil Penalty Policy (ID No.: Enforcement 99-0002-NPD). Pursuant to IC 13-30-4-1, the Commissioner may assess penalties of up to \$25,000 per day for each violation.

Please contact Deborah A. Cole, Case Manager, of my staff at 317-234-5377 or by e-mail at [dcole@idem.in.gov](mailto:dcole@idem.in.gov) if you have any questions.

For the Commissioner:

Date: 6-26-17



David P. McIver, Chief  
Enforcement Section  
Office of Air Quality

cc: Noble County Health Department  
Deborah A. Cole, Enforcement Section, Office of Air Quality  
Adrianne Lenyo, Compliance Branch, Office of Air Quality



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Eric J. Holcomb  
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Commissioner

Respondent Name: Pulver & Sons Asphalt Materials, Inc.  
Case Number: 2017-24523-A

### **AGREED ORDER**

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to IC 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

### **I. FINDINGS OF FACT**

1. Complainant is the Commissioner ("Complainant") of the Indiana Department of Environmental Management ("IDEM"), a department of the State of Indiana created by Indiana Code ("IC") 13-13-1-1.
2. Respondent is Pulver & Sons Asphalt Materials ("Respondent"), which owns and operates the source with Plant ID No.: 113-03265, located at 819 North Orange Street, in Albion, Noble County Indiana ("Site").
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation ("NOV") via certified mail to:  

Mr. Carl Pulver, President Pulver & Sons Asphalt Materials Inc. 819 North Orange Street Albion, IN 46701	Mr. Carl Pulver, Registered Agent Pulver & Sons Asphalt Materials Inc. 2616 E State Road 8 Albion, IN 46701
-------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------
5. At the time of an inspection conducted on May 8, 2017, the following violation was in existence or observed at the Site by a representative of IDEM's Office of Air Quality ("OAQ").

Pursuant to FESOP No.: 113-26570-03265, Permit Condition D.1.12, the Permittee shall perform a stack test for PM and PM10 on the aggregate dryer/mixer at least once every five (5) years from the date of the last valid compliance demonstration.

Respondent failed to conduct a stack test for PM and PM10 within five (5) years of the date of the last valid compliance demonstration, in violation of FESOP Condition D.1.12.

6. In recognition of the settlement reached, Respondent waives any right to administrative and judicial review of this Agreed Order.

## **II. ORDER**

1. This Agreed Order shall be effective ("Effective Date") when it is adopted via signature by Complainant or Complainant's delegate, and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. This offer to settle the allegations contained in this Agreed Order does not bind or obligate the parties of this enforcement action if the Agreed Order is not adopted.
2. Respondent shall perform PM and PM10 stack testing on the aggregate dryer/mixer in accordance with Permit Condition D.1.12 no later than sixty (60) days after the Effective Date
3. Respondent is assessed a civil penalty of Five Hundred Dollars (\$500.00). Respondent shall pay said penalty amount no later than fifteen (15) days after the Effective Date ("Due Date"). In the event that the civil penalty is not paid by the Due Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101.
4. In the event the terms and conditions of this Agreed Order are violated, Complainant may seek additional relief.
5. Civil penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number of this action and shall be mailed to:  
  
IDEM Office of Legal Counsel  
IGCN, Room N1307  
100 North Senate Ave  
Indianapolis, IN 46204
6. This Agreed Order shall apply to and be binding upon Respondent and its successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.
7. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
8. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal

made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of its obligation to comply with the requirements of its applicable permit or any applicable Federal or State law or regulation.

9. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation.
10. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the NOV.
11. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the EPA or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the EPA or any other agency or entity.
12. The parties were free to consult with their respective counsel regarding entry into this Agreed Order to the extent each deemed necessary.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**

TECHNICAL RECOMMENDATION:

Department of Environmental Management

By: \_\_\_\_\_



David P. McIver, Chief

Enforcement Section

Office of Air Quality

Date: \_\_\_\_\_

6-26-17

RESPONDENT:\*

Pulver & Sons Asphalt Materials Inc.

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_\_.

For the Commissioner:

By: \_\_\_\_\_

Keith Baugues, Assistant Commissioner

Office of Air Quality

**\* In the event that Respondent does not accept the settlement offer contained in this Agreed Order, IDEM notes that this document is a qualified offer of settlement, and therefore Rule 408 of Indiana Rules of Evidence applies to this document, rendering it inadmissible.**